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IN THE

# Supreme Court of the United States

## No. 73-1683

LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS

Plaintiff

*vs.*

B. D. MOORING

Defendant-Petitioner

and

LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS

Plaintiff

*vs.*

E. J. NOSSER

Defendant-Petitioner

**RESPONSE BY LOUISIANA STATE BOARD OF MEDICAL EXAMINERS TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA FILED BY B. D. MOORING AND E. J. NOSSER**

*MAY IT PLEASE THE COURT:*

**— STATEMENT OF THE CASE —**

In 1955 and 1958 respectively, B. D. Mooring and E. J. Nosser, chiropractors, were enjoined from the practice of medicine in the State of Louisiana pursuant to the Louisiana Medical Practice Act by the First Judicial District Court, Caddo Parish, Louisiana. Since that time, Mooring and Nosser have continued

to practice medicine in the State of Louisiana, thereby flagrantly and openly defying the Orders of the First Judicial District Court. In April of 1973, the Louisiana State Board of Medical Examiners filed contempt rules against Mooring and Nosser. The cases were tried and Mooring and Nosser were both adjudged to be in contempt of Court for failing to comply with the injunctions.

Nosser and Mooring applied for Writs to the Second Circuit Court of Appeal in the State of Louisiana which were denied on two occasions and also applied for Writs to the Louisiana Supreme Court, which Writs were also denied.

At this point, we feel that a short sketch of the background of this situation would be beneficial to the Court. The State of Louisiana was for quite a long time the only State which would not allow the licensing of chiropractors. The policy of the State of Louisiana was that the chiropractors, if licensed, could not be effectively restricted to the practice of chiropractic, but would continue to practice medicine on a full scale basis.

As this Honorable Court is probably aware, the basic tenet of the chiropractic philosophy is that there is one cause and one cure for all diseases known to man. The cause is subluxations of the vertebra and the cure is the manipulation or "popping" of the back and neck. In other words, subluxations or slight misalignment of the vertebra causes heart disease, cancer, pimples, acne, and any and all other diseases known to man. The simple cure is a manipulation or "popping" of the back and neck. Thus, the State of Louisiana felt that it would be virtually impossible to restrict the chiropractors to treatment within their field and commensurate with their training. Therefore, the State of Louisiana, for years, refused to license chiropractors in any way, shape or form. However, in the last session of the Louisiana Legislature, in the summer of

1974, the political climate changed and the Louisiana Legislature for the first time licensed chiropractors.

Plaintiff in these actions is the Louisiana State Board of Medical Examiners. The Board is a state agency created by legislative act and the Board is charged with the duty of enforcing the Louisiana Medical Practice Act. (La. R.S. 37:1261-1290). In view of the fact that the chiropractors have now been licensed in Louisiana, the Board does not want to appear vindictive by virtue of the fact that we are continuing with these proceedings. Nosser and Mooring committed the acts resulting in the contempt of Court convictions prior to the time they were licensed. They were also convicted of contempt of Court prior to the time they were licensed. Thus, in view of the fact that these cases have been going on for as long as they have and in view of the fact that the issue is the enforcement of a *Contempt of Court Order* secured prior to licensing of the chiropractors, the Louisiana State Board of Medical Examiners feels that it has no choice but to continue with these cases to conclusion, especially in view of the request by this Honorable Court that we file a reply brief. Therefore, we are filing this brief in opposition to the petition for the writ and we are hereby asking, urging and requesting this Honorable Court to deny the writ application of Nosser and Mooring for the reasons set forth below.

## — REASONS FOR DENYING THE WRIT —

### Nosser's and Mooring's Contention That They Were Entitled to a Trial by Jury

At the outset, we will address ourselves to what purports to be the primary reason or ground for Nosser and Mooring applying to this Honorable Court for relief, that being the contention that they were entitled to a jury trial on the contempt rule. Nosser and Mooring have made this their primary contention all the way through these proceedings and are still

contending that they were entitled to a jury trial on the contempt rule. We feel that all of the various and sundry objections raised by Nosser and Mooring are frivolous and that they are simply "grasping at straws". However, we will address ourselves at the outset to the issue of the denial of the jury trial which is the only constitutional issue raised.

As the record shows, Mooring and Nosser were enjoined from the practice of medicine in the State of Louisiana by the First Judicial District Court in 1955 and 1958, respectively. On May 20, 1968, this Honorable Court decided the case of *Duncan vs. Louisiana*, 291 U.S. 145. In *Duncan*, the defendant was accused of simple assault which carried a possible two year prison sentence. This Court discussed the issue of when an accused would be entitled to a jury trial and held that a jury trial should be granted in all "serious" crimes, but did not draw the line between "serious" and "petty" crimes. This Court held that a possible two year prison sentence was a "serious" crime and therefore the defendant was entitled to a jury trial.

Approximately two years later, on June 22, 1970, this Honorable Court, in *Baldwin vs. New York*, 90 S. Ct. 1866, drew the line between "serious" and "petty" offenses for the purpose of determining when a defendant was entitled to a jury trial. In *Baldwin*, the punishment was a possible one year sentence. This Court held that any crime which called for punishment of more than six months imprisonment amounted to a "serious" crime with the defendant being entitled to a jury trial. Any crime with a punishment of six months or less was a "petty" crime and the defendant was not entitled to a jury trial.

Following *Baldwin*, the Louisiana Supreme Court decided the case of *Louisiana State Board of Medical Examiners vs. Bates*, 258 La. 1049, 249 So. 2nd 127 (1971). Bates was

a chiropractor practicing in Rapides Parish. He had been enjoined in 1958 and the Board of Medical Examiners moved for contempt in 1968. Bates moved for a jury trial on the contempt hearing, which motion was denied. Bates was tried and found guilty of contempt for violating the injunction. He applied for writs, which writs were granted by the Louisiana Supreme Court. The Louisiana Supreme Court then held that Bates was entitled to a jury trial on the contempt citation because of the fact that the contempt punishment statute, R.S. 13:4611(a)(2), provided for a possible one year prison sentence and a possible $1,000.00 fine. The Court concluded that since 13:4611(a)(2) called for more than a six months prison sentence, that Bates was entitled to a jury trial.

In view of the *Baldwin* decision, the Louisiana Legislature, upon recommendation of the Law Institute, amended 13:4611(a)(2) and reduced the penalty for contempt from the one year maximum prison sentence or $1,000.00 fine to not more than six months in prison or $500.00 fine, or both. This amendment reducing the penalty was effective on July 12, 1972.

From the above, it is clear that a defendant in a contempt rule will be tried by a judge and not a jury if the allegations or alleged acts of contempt occurred after the effective date of the amendment of 13:4611(a)(2), July 12, 1972.

As demonstrated by the evidence in this matter, the acts committed by Mooring and Nosser which resulted in the contempt judgment all took place after July 12, 1972, the effective date of the amendment of 13:4611(a)(2). Thus, there is no question but that Mooring and Nosser were not entitled to a jury trial, but a trial by judge, which is what they received.

Mooring and Nosser are apparently contending that they should be entitled to a trial by jury because in a contempt rule filed in 1969 the Trial Court ordered a trial by jury. We have

no quarrel with the Trial Court's ruling on the 1969 contempt rule. However, the contempt rules at issue here were filed in April of 1973, and all of the evidence presented which resulted in the contempt judgment dealt with Mooring's and Nosser's activities subsequent to July 12, 1972. Thus, as stated above, Mooring and Nosser were not entitled to a jury trial.

**Discussion of Other Issues Raised By Nosser and Mooring**

As stated above, we feel that none of the issues discussed in the brief of Nosser and Mooring have any merit whatsoever and other than the jury trial issue, there are no constitutional issues involved. However, in view of the fact that the issues have been raised by the chiropractors in their brief, we will briefly discuss each issue.

The chiropractors complain that the Louisiana State Board of Medical Examiners did not authorize counsel or counsel's law firm to initiate the proceedings. Quite obviously, the chiropractors and their counsel cannot seriously contend that counsel would file these proceedings without being retained and authorized to do so by its client, Louisiana State Board of Medical Examiners. La. R.S. 37:1269 clearly provides that the Board of Medical Examiners may employ counsel to carry out the provisions of the Louisiana Medical Practice Act. The Minutes are all in the record of the proceedings and clearly authorize the institution of these proceedings by counsel and counsel's law firm. In particular, the Minutes in the record of these proceedings reflect that the Board employed the law firm of Adams & Reese in connection with these proceedings and further gave Adams & Reese the authority to associate local counsel. The firm of Adams & Reese is situated in New Orleans, Louisiana, and Adams & Reese are the statewide counsel for the Louisiana Board of Medical Examiners. Adams & Reese followed the practice of associating local counsel in

each particular area to represent the Board. The law firm of Cook, Clark, Egan, Yancey & King was associated by Adams & Reese to handle this litigation. In fact, when the contempt rules were filed herein, they were filed in the name of Adams & Reese and local counsel in Shreveport, Louisiana, being the firm of Cook, Clark, Egan, Yancey & King, all as is set forth in the petitions for contempt of Court.

Nosser and Mooring also complained that the conduct which resulted in the contempt convictions of Nosser and Mooring was directly brought about by the plaintiff and its agents due to the fact that the plaintiff's witnesses went in for treatment by Nosser and Mooring. Of course, this argument is ludicrous, to say the least. Nosser and Mooring have been flagrantly and openly practicing medicine in the State of Louisiana for years, i.e., that they have practiced medicine before the injunctions in 1955 and 1958 and continually since that time. As all of the evidence shows in the contempt trials, Nosser and Mooring held themselves out to the public as chiropractors and further held themselves out to the public as being able to diagnose and cure any and all types of diseases, including cancer, heart disease, etc. They put their names in the phone book, they had signs in front of their office, they had brochures in their office, etc. All of this is in evidence and it was conclusively proven at the trials that they were holding themselves out to the public as being able to diagnose and cure the diseases of man. Clearly, the Louisiana State Board of Medical Examiners did not induce them to practice medicine in the State of Louisiana. It was of their own volition.

The chiropractors also complained that they were denied the right of confrontation of witnesses and the right to cross examine witnesses. They contend that Louisiana State Board of Medical Examiners introduced into evidence an affidavit and certificate that Nosser and Mooring were not licensed to practice medicine in the State of Louisiana over and above

their objections. Of course, if Nosser and Mooring were licensed physicians in the State of Louisiana, we would not be involved in this litigation. At the contempt rules, in view of the possibility that the contempt rules would be considered criminal proceedings, the plaintiff was not in a position to call Nosser and Mooring on cross examination to solicit an admission from Nosser and Mooring that they were not licensed to practice medicine in Louisiana. Obviously, if they had been licensed, they would have taken the stand and said so. However, plaintiff introduced into evidence a certificate and affidavit from the duly authorized Secretary of the Louisiana Board of Medical Examiners, which is a state agency in the State of Louisiana, certifying that Nosser and Mooring were not on the rolls as licensed to practice medicine. Clearly, the Secretary of the Louisiana State Board of Medical Examiners could have been called as a witness on cross examination by Nosser and Mooring if they so desired. Additionally, R.S. 37:1282, which is a section of the Louisiana Medical Practice Act, provides that the Board of Medical Examiners shall publish annually the list of names of those individuals who hold certificates to practice medicine in the State of Louisiana and that this list shall be received in evidence by Courts as proof that the individuals are duly certified. It is clear to us that a certificate from the duly authorized Secretary of this state agency, the Louisiana Board of Medical Examiners, to the effect that an individual is not on the certified and published list is clearly within the scope and purview of this Statute and clearly admissible as proper evidence in a court of law.

Finally, the chiropractors complained that the Louisiana Board of Medical Examiners did not allege that the injunctions obtained against Nosser and Mooring were "lawful" and that the Board did not prove that these injunctions were lawful injunctions. Like the other complaints of the chiropractors, this allegation also has no substance whatsoever.

Clearly, as shown in our petitions for contempt of Court, the specific allegations were made that the injunctions previously obtained were lawful. Furthermore, there was never a reversal by a higher court of these injunctions which conclusively establishes that they were lawful. More significantly, we take this opportunity to quote from the transcript in the Nosser injunction trial which was held on January 7, 1958, wherein at page 74 of the transcript, at the conclusion of the taking of the testimony, the Trial Judge stated as follows:

> "The Court is firmly convinced that the plaintiff has proved its case, not only by a preponderance of the evidence, but beyond, not only any reasonable doubt, *but any doubt at all.* There is no doubt in my mind whatsoever."

The chiropractors also complained that they were never notified and that we did not establish that proper notice was given to them of the injunction proceedings, etc. Of course, the injunction proceedings which bear the same suit numbers as the contempt proceedings clearly reflect that service of process on the chiropractors was properly made. Furthermore, as the transcripts in the injunction trials demonstrate, Nosser and Mooring were physically present at the injunction trials, represented by counsel, and actually testified in the cases.

## CONCLUSION

It is respectfully submitted that the only constitutional issue raised by the chiropractors was the claim that they were denied a jury trial. It is crystal clear that they were not entitled to a jury trial. In view of the fact that the maximum possible punishment under Louisiana law was no more than six months imprisonment for contempt of Court, the chiropractors were tried by judge as they should have been.

These cases get down to the issue of whether a Trial Court will be able to lawfully enforce its own Orders. These

are contempt of Court proceedings. It was conclusively established at the contempt of Court trials that Nosser and Mooring had flagrantly and deliberately disobeyed and not complied with the prior injunctions entered against them. The Trial Court found them to be in contempt of Court. It is respectfully submitted that the Trial Court's contempt rulings be upheld and that the writ applications of Nosser and Mooring be denied.

Respectfully submitted,

COOK, CLARK, EGAN, YANCEY & KING

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## CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing Brief has been mailed, proper postage affixed, to Camille F. Gravel, Jr., Esquire, at 611 Murray Street, Alexandria, Louisiana 71301, attorney for defendants-petitioners.

Shreveport, Louisiana, this 15th day of October, 1974.

s/ Gordon E. Rountree
OF COUNSEL